

**VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
OFFICE OF PRODUCT & INDUSTRY STANDARDS**

PO Box 1163, Richmond, VA 23218
Phone: (804) 786-2476 · Fax: (804) 786-1571 · www.vdacs.virginia.gov

Revised August 2006

Who needs a Commercial Feed license?

Any person who manufactures a commercial feed or whose name appears on the label as the guarantor is required to obtain a commercial feed license before distributing, selling, offering or exposing for sale in Virginia any commercial feed or supplying feed to a contract feeder. Also any person with multiple manufacturing facilities is required to obtain a license for each facility. The license year is January 1 through December 31. Any new applicant who fails to obtain a license within fifteen working days of notification or any licensee who fails to comply with the license renewal shall pay a fifty dollar late fee in addition to the license fee. The license fee is fifty dollars.

What Commercial Feed products need to be registered?

All medicated feed, small package commercial feed, specialty pet feed or canned animal food is required to be registered before being distributed in Virginia. The registration year is January 1 through December 31. Any person who fails to comply with the registration renewal requirements shall pay a fifty dollar late fee in addition to the registration fee. A label must be submitted on each product for review. When unregistered commercial feed is identified in commerce in Virginia, the guarantor is given a grace period of fifteen working days from notification of non-registration to register the product. Any person who fails to register the product within the grace period shall pay a fifty dollar late fee in addition to the registration fee.

Product Category	Description	Fees
Small Package Commercial Feeds distributed in packages of 10 lbs. or less, including canned pet food	Commercial feed is any materials which are intended for use as feed for animals including cats & dogs	\$50.00 per product
Medicated Feed	Commercial feed obtained by mixing a commercial feed and a drug	\$50.00 per product
Specialty Pet Food	Commercial feed prepared and distributed for consumption by specialty pets. Specialty pet means any domesticated animal normally maintained in a cage or tank. (Exempted: dogs, cats, horses, rabbits & wild birds)	\$35.00 per product-specialty pet food distributed in packages of 1 lb. or less up to a maximum of \$700 (20 products)-

Who pays Commercial Feed Inspection Fees?

The Virginia Commercial Feed Law requires the manufacturer or guarantor to report commercial feed tonnage on any commercial feed sold or distributed to a non-licensee during the reporting period. The reporting period for regulated products is from January 1 through December 31 with the fee due by February 1 of the following year. The inspection fee is thirty-five dollars or seven cents a ton, whichever is greater.

Filing Instructions for Feed Licenses and Products

The following documents are **required** for Feed Licensing and Product Registration (a feed license is required before any products can be registered for distribution/sale in Virginia):

1. Completed Feed License Application
2. \$50 fee for Feed License Application
3. Completed Feed Product Registration Application
4. Fees (as indicated above) for each product to be registered
5. Labels for each product to be registered

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**LICENSE APPLICATION
MANUFACTURER OR DISTRIBUTOR OF FEEDS**

Company Name: _____

Division: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone (including area code): _____ Fax (including area code): _____

Contact Name: _____ Title: _____

Email: _____

LICENSE INFORMATION:

	Feed Category (check all that apply)	Description
<input type="checkbox"/>	1. Commercial	Feed packaged greater than 10# (includes medicated feeds) which are distributed or intended for distribution for use as feed for animals, or for mixing in feed
<input type="checkbox"/>	2. Contract	Feed manufactured or distributed on a contract basis to a contract feeder.
<input type="checkbox"/>	3. Ingredients, Premixes, Concentrates or Supplements	Feed manufactured or distributed as a feed other than a feed intended to be fed undiluted (includes medicated feed).
<input type="checkbox"/>	4. Small Package	Non-medicated feed manufactured or distributed in packages less than 10# but greater than 1# (includes dog & cat food, and treats).
<input type="checkbox"/>	5. Canned Animal Food	Canned food that is intended for use as feed for animals
<input type="checkbox"/>	6. Specialty Pet Food	Feed packaged in packages of one pound or less (includes animals normally maintained in a cage or tank, i.e. gerbils, hamsters, canaries, tropical fish, and reptiles. Does not include dogs, cats, horses, rabbits or wild birds).

For Feed Categories 1 – 3, please indicate animal type below (check all that apply):

<input type="checkbox"/>	Equine	<input type="checkbox"/>	Cattle
<input type="checkbox"/>	Poultry	<input type="checkbox"/>	Swine
<input type="checkbox"/>	Sheep	<input type="checkbox"/>	Goats

License fee \$50.00. Make check payable to **Treasurer of Virginia.**

Completed application and check should be sent to:

**Virginia Department of Agriculture & Consumer Services
PO Box 526
Richmond, Virginia 23218-0526**

For Finance Use:

License Fee (885-02202)

Late Fee (885-02452)

Office Use:

License No: _____

Keyed date: _____

Mailed date: _____

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PRODUCT REGISTRATION
COMMERCIAL FEED AND ANIMAL REMEDIES

VA License for Current Calendar Year: _____ Yes (License # _____)

_____ No (if no, license application and fee must be received with product registration form)

Company Name: _____

Division: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone (including area code): _____ Fax (including area code): _____

Contact Name: _____ Title: _____

Email: _____

	Feed Category	# of Products	Fee (per product)	Total Due	Finance Code
	Medicated Feed		\$50.00	\$	885-02638
	Sm Pkg Commercial Feed (<10#)*		\$50.00	\$	885-02201
	Canned Animal Food		\$50.00	\$	885-02207
	Specialty Pet Food (1# and under)**		\$35.00	\$ (\$700.00 max)	885-02208
	Animal Remedies		\$25.00	\$	885-02212
			GRAND TOTAL	\$	

*Sm Pkg Commercial Feed includes food, treats, vitamins and supplements for dogs, cats, and rabbits and supplements for other livestock species packaged 10 pounds and less.

**Specialty Pet Food includes food, vitamins and supplements for animals normally maintained in a cage or tank such as ferrets, gerbils, hamsters, fish, reptiles, and birds.

Prod No: (VA Office Use ONLY)	Product Name on Label (include legible copy or original label for all products)	Package Sizes	%Crude Protein	%Crude Fat	%Crude Fiber	%Moisture	%Ash

Attach additional sheets as necessary

Code of Virginia

Virginia Commercial Feed Law

§ 3.1-828.1. Title.

This chapter shall be known as the "Virginia Commercial Feed Act."

(1994, c. 743.)

§ 3.1-828.2. Definitions.

As used in this chapter unless the context requires a different meaning:

"Animal" means any animate being, which is not human, endowed with the power of voluntary action.

"Board" means the Board of Agriculture and Consumer Services.

"Brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from the commercial feed of other distributors or registrants.

"Commercial feed" means any materials or combination of materials which are distributed or intended for distribution for use as feed for animals, or for mixing in feed. Commercial feed shall not include the following commodities, provided they are not adulterated as provided in § 3.1-828.10: unmixed whole seeds, raw meat, raw goats' milk, at the farm only, hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances, when not mixed or intermixed with other materials.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Contract feeder" means a person who is an independent contractor and: (i) feeds commercial feed to animals pursuant to a contract; (ii) pursuant to such contract, such commercial feed is supplied, furnished, or otherwise provided by a licensed distributor to such person; and (iii) whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of production.

"Customer-formula feed" means commercial feed which consists of a mixture of commercial feeds, or feed ingredients, or a combination of both commercial feeds and feed ingredients, each batch being manufactured according to the specific instructions of the final purchaser.

"Custom mix feed" means a feed for which the customer provides ingredients.

"Department" means the Department of Agriculture and Consumer Services.

"Distribute" means to offer or expose for sale, sell, warehouse, exchange, or barter commercial feed; or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

"Distributor" means any person who distributes commercial feed.

"Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than commercial feed intended to affect the structure or any function of the animal body.

"Feed ingredient" means each of the constituent materials making up a commercial feed.

"Guarantor" means any person whose name appears on the label of a commercial feed.

"Label" means a display of written, printed, or graphic matter upon, or affixed to, the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a bulk commercial feed, or customer-formula feed, is distributed.

"Labeling" means all labels and other written, printed, or graphic matter (i) upon a commercial feed or any of its containers or wrapper or (ii) accompanying such commercial feed.

"Licensee" means the person who receives a license to distribute commercial feed under the provisions of this chapter.

"Manufacture" means to grind, mix or blend feed ingredients, or further process a commercial feed for distribution.

"Manufacturer" means any person who manufactures commercial feed.

"Medicated feed" means a commercial feed obtained by mixing a commercial feed and a drug.

"Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

"Official analysis" means the analysis of an official sample made by the Commissioner or his agent.

"Official sample" means a sample of feed taken by the Commissioner or his agent and designated as "official" by the Board.

"Percent" or "percentages" means percentage by weight.

"Pet food" means any commercial feed prepared and distributed for consumption by cats and dogs.

"Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

"Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of measurement of a commodity.

"Small package commercial feed" means commercial feed distributed in individual packages of ten pounds or less.

"Specialty pet" means any domesticated animal normally maintained in a cage or tank, including, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles. Specialty pet does not include dogs, cats, horses, rabbits and wild birds.

"Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

"Stop sale, use, removal or seizure order" means an order which prohibits the distributor from selling, relocating, using, or disposing of a lot of commercial feed or portion thereof, in any manner, until the Commissioner, or his agent, or a court, gives written permission to sell, relocate, use, or dispose of the lot of commercial feed or portion thereof.

"Ton" means a net weight of 2,000 pounds avoirdupois.

(1994, c. 743.)

§ 3.1-828.3. Authority of the Commissioner.

This chapter shall be administered and enforced by the Commissioner. The Commissioner may appoint agents to assist in carrying out the provisions of this chapter and regulations adopted and established pursuant thereto.

(1994, c. 743.)

§ 3.1-828.4. Authority of the Board and the Commissioner to promulgate regulations.

A. The Board is authorized to promulgate such regulations for commercial feeds as are specifically authorized in this chapter and such other reasonable regulations as may be necessary for the efficient enforcement of this chapter.

B. The Commissioner may adopt as a regulation, the official Definitions of Feed Ingredients, Official Feed Terms, and analytical variations adopted by the Association of American Feed Control Officials and published in the Official Publication of that organization. The Commissioner may adopt any regulation under federal law that pertains to this chapter, amending it as necessary for intrastate applicability. The Commissioner may adopt as a regulation the methods of sampling and analysis for commercial feed and the components of commercial feed adopted by the Association of Official Analytical Chemists in the publication of that organization. The Commissioner may adopt as a regulation any method of sampling and analysis for commercial feed and the components of commercial feed developed by the Department or adopted by agencies of the federal government, agencies of other states, the Division of Consolidated Laboratories or other commercial laboratories accredited by the Food and Drug Administration, United States Department of Agriculture or Association of Official Analytical Chemists. Such regulations adopted by the Commissioner shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia

Register of Regulations. The regulation shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation.

C. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations.

D. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or revision of any regulation adopted pursuant to subsections B and C.

(1994, c. 743.)

§ 3.1-828.5. Labeling.

A. The manufacturer or guarantor of a commercial feed, except customer-formula or custom mix feed, shall affix a label to the commercial feed that states in the English language the following information:

1. The quantity statement;
2. The product name and, if any, the brand name, of the commercial feed;
3. The guaranteed analysis, the terms of which the Board shall determine by regulation so as to advise the user of the composition of the feed, or to support claims made in the labeling. In all cases, the substances or elements must be determinable by laboratory methods of sampling and analysis, as specified in § 3.1-828.4;
4. The common or usual name of each ingredient used in the manufacture of the commercial feed; however, the Board may, by regulation, (i) permit the use of a collective term for a group of ingredients which perform a similar function or (ii) exempt such commercial feeds, or any group thereof, from this requirement if the Board finds that such statement is not required in the interest of consumers;
5. The name and principal mailing address of the manufacturer, or the person responsible for distributing the commercial feed, if such person is not the manufacturer;
6. Directions for use in the case of all commercial feeds containing drugs, and for such other feeds as the Board may, by regulation, require as necessary for the safe and effective use of the commercial feed; and
7. Such precautionary statements as the Board, by regulation, determines are necessary for the safe and effective use of the commercial feed.

B. The manufacturer or guarantor of a customer-formula or custom mix feed shall affix to or include with the feed a label, invoice, delivery slip, or other shipping document that states in the English language the following information:

1. The name and address of the manufacturer;
2. The name and address of the purchaser;
3. The date of manufacture;
4. Either (i) the product name and net weight of each commercial feed and each other ingredient used in the mixture; (ii) the guaranteed analysis, as provided in subdivision 3 of subsection A of this section with the ingredients as provided in subdivision 4 of subsection A of this section; (iii) identification by means of an identifying name, number or similar designation, where the manufacturer or guarantor furnishes all ingredients for a customer-formula feed. The manufacturer or guarantor may use this section instead of listing ingredients as provided in clauses (i) and (ii) of this subdivision on the label or invoice, provided that the manufacturer or guarantor makes available a copy of the list of ingredients to the Commissioner or his agent at the location where the Commissioner or his agent takes an official sample; or (iv) the manufacturer or guarantor notes a modification on the label of a commercial feed where the manufacturer or guarantor modifies a commercial feed in normal trade at the request of the consumer, and such request does not affect the guaranteed analysis of said feed;
5. Directions for use for all customer formula or custom mix feeds containing drugs and for such other feeds as the Board may require, by regulation, as necessary for the safe and effective use of the commercial feed;

6. The directions for use and precautionary statements as required by subdivisions 6 and 7 of subsection A of this section; and

7. If drugs are used in formulating the commercial feed: (i) the purpose of the medication (claim statement) and (ii) the established name of each active drug ingredient, and the level of each drug used in the final mixture, expressed in accordance with applicable regulations.

(1994, c. 743.)

§ 3.1-828.6. Licensing.

A. Any person who manufactures a commercial feed or whose name appears on the label as guarantor shall, before (i) distributing, selling, offering or exposing for sale in the Commonwealth any commercial feed or (ii) supplying commercial feed to a contract feeder, obtain a license from the Commissioner. The person who manufactures or is the guarantor of such commercial feed shall submit a license application to the Commissioner on a form furnished or approved by the Commissioner, and pay to the Commissioner a license fee of fifty dollars. Any person with multiple manufacturing facilities shall obtain a license and pay a license fee to the Commissioner for each manufacturing facility which distributes commercial feed in Virginia. The license year shall be January 1 through December 31. Each license shall expire on December 31 of the year for which it is issued; however, any license shall be valid through January 31 of the next ensuing year or until the issuance of the renewal license, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before December 31 of the year for which the current license was issued. Any new applicant who fails to obtain a license within fifteen working days of notification of the requirement to obtain a license, or any licensee who fails to comply with license renewal requirements, shall pay a fifty-dollar late fee to the Commissioner in addition to the license fee. The Commissioner or his agent may issue a stop sale, use, removal or seizure order on any commercial feed that the nonlicensee produces or distributes in the Commonwealth until such license is issued.

B. The Commissioner shall refuse to issue the license of any person not in compliance with any provision of this chapter, and shall revoke the license of any person subsequently found not to be in compliance with any provision of this chapter.

(1994, c. 743.)

§ 3.1-828.7. Product registration, inspection fees, and reports.

A. 1. Any person who distributes (i) medicated feed pursuant to subdivision 3 of this subsection, (ii) small package commercial feed pursuant to subdivision 4 of this subsection, and (iii) specialty pet food pursuant to subdivision 5 of this subsection shall register those commercial feeds with the Commissioner and pay to the Commissioner the registration fees specified in those subdivisions. No person may distribute medicated feed, small package commercial feed, or specialty pet food in the Commonwealth without first obtaining a registration certificate from the Commissioner.

2. The registration year for medicated feed, small package commercial feed and specialty pet food shall be January 1 through December 31. Each registration shall expire on December 31 of the year for which it is issued; however, any registration shall be valid through January 31 of the next ensuing year or until the issuance of the renewal registration, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before December 31 of the year for which the current registration was issued. Any person who fails to comply with registration renewal requirements shall pay a fifty-dollar late fee to the Commissioner in addition to the registration fee. The Commissioner or his agent may issue a stop sale, use, removal or seizure order on any nonregistered commercial feed until such registration is issued.

3. Any person whose name appears on the label of a medicated feed, except for customer-formula medicated feed, distributed in the Commonwealth shall apply for registration for each medicated feed on forms furnished or approved by the Commissioner; shall pay to the Commissioner by January 1 a registration fee of fifty dollars per medicated feed; and shall submit a copy of the proposed label for such medicated feed for approval with the registration form. The manufacturer or guarantor shall pay to the Commissioner an inspection fee as specified in subsection B. The manufacturer or guarantor is not required to register additional package sizes of the same medicated feed.

4. Any person whose name appears on the label of small package commercial feed, except as specified in subdivision 5 of this subsection, shall apply for registration for each small package commercial feed on forms furnished or approved by the Commissioner, and shall pay a registration fee of fifty dollars to the Commissioner by January 1 per small package commercial feed, in lieu of an inspection fee for this size package. The manufacturer or guarantor shall submit a copy of any label, used or proposed to be used with the small package commercial feed for approval with the registration form. In

addition, the manufacturer or guarantor shall report commercial feed tonnage and pay the inspection fee on all packages of the same product name or brand name of any commercial feed registered under this section, sold in packages of greater than ten pounds, as required by subsection B.

5. Any person whose name appears on the label of a specialty pet food distributed in the Commonwealth in individual packages of one pound or less only shall apply for registration for each specialty pet food in individual packages of one pound or less only, on forms furnished or approved by the Commissioner; shall pay to the Commissioner by January 1 a registration fee of thirty-five dollars per specialty pet food to a maximum of \$700 for this size package, in lieu of the inspection fee; and shall submit a copy of any label, used or proposed to be used with the specialty pet food, for approval with the registration form.

6. If the Commissioner or his agent, after examination and investigation, finds that the application and labeling of commercial feed comply with this chapter, the Commissioner shall issue a certificate of registration to the applicant upon payment of the specified registration fee. No certificate issued is a recommendation or endorsement by the Commissioner of the product so registered.

7. If the Commissioner or his agent identifies any unregistered commercial feed in commerce in the Commonwealth during the registration year, the Commissioner shall give the guarantor a grace period of fifteen working days from issuance of notification of nonregistration to the guarantor within which to register the product. Any person who fails to register the product within the grace period shall pay a fifty-dollar late fee to the Commissioner in addition to the registration fee. The Commissioner or his agent may issue a stop sale, use, removal or seizure order upon any commercial feed until the registration is issued.

B. 1. The reporting year for commercial feed tonnage shall be January 1 through December 31. The manufacturer or guarantor shall file the tonnage statement with the Commissioner and shall pay to the Commissioner the inspection fee, which shall not be less than thirty-five dollars per year, by February 1 of the next ensuing year. Except when distributing to a contract feeder, any person who manufactures or distributes commercial feed or a component of commercial feed under his label in the Commonwealth, including a person who mixes, mills or processes customer-formula feed, shall file with the Commissioner a tonnage statement and pay to the Commissioner an inspection fee of seven cents per ton of commercial feed per reporting year by February 1. Any person who distributes commercial feed to contract feeders in the Commonwealth shall file with the Commissioner a tonnage statement and pay to the Commissioner an inspection fee of seven cents per ton of commercial feed distributed to contract feeders per reporting year by February 1.

a. Except as provided in clause b of this subdivision, any person who distributes commercial feed to a nonlicensed person shall file the tonnage statement with the Commissioner and pay to the Commissioner the inspection fee as specified in this subsection.

b. The person specified in clause a of this subdivision who distributes commercial feed shall not be required to file the tonnage statement or pay the inspection fee if another person agrees in a written statement, filed with the Commissioner, to file the tonnage statement and pay the inspection fee by February 1.

c. Any person pursuant to the exception specified in clause b of this subdivision who does not file the tonnage statement or pay the inspection fee, shall file with the Commissioner by February 1 a purchasing report on a form furnished or approved by the Commissioner stating the number of tons of commercial feed purchased by such person during the reporting year and from whom the commercial feed was purchased.

2. The Commissioner or his agent may not require a person to pay an inspection fee on a portion of a custom-mix feed that is produced by the purchaser or acquired by the purchaser from a source other than the person who is paying the inspection fee.

3. Any person who manufactures a commercial feed or who distributes a commercial feed in the Commonwealth under his label shall pay to the Commissioner for that period of July 1, 1994, through December 31, 1994, a minimum inspection fee of seventeen dollars and fifty cents per person.

4. Any person who is liable for an inspection fee which is due and owing, and has not been paid to the Commissioner, within fifteen working days following the due date of February 1, shall pay to the Commissioner a late fee of ten percent of the inspection fee due, or fifty dollars, whichever is greater, in addition to the amount of inspection fee owed. The assessment of this late fee shall not prevent the Commissioner from taking other action, as provided for in this chapter.

C. Any person required to pay an inspection fee, or to report commercial feed tonnage, under this chapter, shall keep such records as may be necessary, or required by the Commissioner, to indicate accurately the tonnage of commercial feed, and the product names of any medicated feeds, and the product names of any small package commercial feeds,

and the product names of any specialty pet products distributed by the person in the Commonwealth. The person who reports commercial feed tonnage shall retain such records for a period of three years. The Commissioner, or his agent, may examine such records to verify reported statements of tonnage.

D. The Commissioner shall cancel the commercial feed license and product registrations of any person who fails to comply with the chapter by:

1. Failing to file the tonnage report;
2. Falsifying information;
3. Making an inaccurate statement of tonnage distributed in Virginia during any reporting license year;
4. Making an inaccurate listing of medicated feed, small packaged commercial feed, or specialty pet feed for registration;
5. Failing to pay the license, registration or inspection fee;
6. Failing to accurately report any of the information required to be submitted under this chapter;
7. Failing to keep records for a period of three years; or
8. Failing to allow inspection of records as required by subsection C by the Commissioner or his agent.

(1994, c. 743.)

§ 3.1-828.8. Inspection, sampling, and analysis.

A. For the purpose of enforcement of this chapter, the Commissioner or his agent may:

1. Enter, during operating hours, any factory, warehouse, or establishment within the Commonwealth in which commercial feed is manufactured, processed, packed, warehoused, sold, or held for distribution;
2. Enter any vehicle being used to transport or hold such feed; and
3. Inspect during operating hours, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished material, unfinished material, any container, and labeling therein.

The Commissioner or his agent may enter and inspect to determine whether the provisions of this chapter have been complied with, including whether or not any operations may be subject to such provisions. The inspection shall include the verification of only such records and production and control procedures as may be necessary to determine compliance with this chapter.

B. For the enforcement of this chapter, during operating hours, the Commissioner or his agent may obtain samples from any premises or vehicle enumerated in subsection A of this section, and examine records relating to distribution of commercial feeds.

C. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated, misbranded, or is otherwise deficient under the provisions of this chapter, the Commissioner shall, upon request, furnish to the licensee a portion of the sample concerned, within thirty days following the receipt of such analysis by the licensee.

D. The Commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample. Such official sample shall be obtained and analyzed as provided in § 3.1-828.4.

E. The Commissioner shall allocate adequate personnel to the major farm feed consuming areas of the state to carry out his duties under this act as such duties relate to insuring the quality, analysis, and quantity of feed sold and distributed in the Commonwealth.

(1994, c. 743.)

§ 3.1-828.9. Misbranding.

A. Any person who is a manufacturer or guarantor of commercial feed may not distribute a commercial feed if:

1. The labeling of the commercial feed is false or misleading in any particular;
2. The commercial feed is distributed under the name of another commercial feed;
3. The commercial feed is labeled in any manner other than as required in § 3.1-828.5;
4. The commercial feed purports to be, or is represented as, a commercial feed, or if it purports to contain, or is represented as containing, a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the Board; or
5. Any word, statement, or other information required by, or under authority of, this chapter to appear on the label or labeling of the commercial feed is not prominently placed thereon with such conspicuousness, (as compared with other words, statements, designs, or devices in the labeling) and in such terms, so that the purchaser or user is likely to read and understand the label under customary condition of purchase and use.

B. The violation of any provision of this section shall be deemed to be misbranding.

(1994, c. 743.)

§ 3.1-828.10. Adulteration.

A. Any person who is a manufacturer or guarantor of a commercial feed may not distribute a commercial feed if the commercial feed:

1. a. Contains any poisonous or deleterious substance which may render the commercial feed or its packaging injurious to health, unless the poisonous or deleterious substance is not an added substance and is not of sufficient quantity to render the commercial feed injurious to health under ordinary circumstances;
 - b. Contains any added poisonous, added deleterious, or added non-nutritive substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act. If the substance is a food additive or a pesticide chemical in or on a raw agricultural commodity, clauses c and d of this subdivision, as the case may be, shall govern;
 - c. Is, bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;
 - d. Is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act. Wherein (i) a pesticide chemical has been used in or on a raw agricultural commodity in conformity within an exemption granted, or a tolerance prescribed, under Section 408 of the Federal Food, Drug, and Cosmetic Act and (ii) such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, then the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe, if such residue in or on the raw agricultural commodity has been removed to the extent possible within good manufacturing practice; the concentration of such residue in the processed feed is not greater than the tolerance prescribed by Section 408 of the Federal Food, Drug, and Cosmetic Act for the raw agricultural commodity; and the feeding of such processed feed will not result, or be likely to result, in a pesticide residue in the edible produce of the animal, which pesticide residue is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act;
 - e. Is, bears or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug, and Cosmetic Act; or
 - f. Is, bears or contains any new animal drug which is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act;
2. Has had any valuable constituent, in whole or in part, omitted or abstracted from the commercial feed, or any less valuable substance substituted into the commercial feed;
 3. Has had the composition or quality of the commercial feed fall below or differ from that which the manufacturer or guarantor purports or represents the commercial feed to possess by its labeling;

4. Contains a drug, and the methods used in, or the facilities or controls used for, its manufacture, processing, or packaging do not conform to current good manufacturing practice; or if the drug does not conform to regulations promulgated by the Board, to assure that the drug meets the requirements of this chapter as to safety, and to assure that the drug has the identity, strength, quality, and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the Board shall adopt the current good manufacturing practice regulations for Type A Medicated Articles, and Type B, and Type C Medicated Feeds, established under authority of the Federal Food, Drug, and Cosmetic Act, unless the Board determines that such regulations are not appropriate to the conditions which exist in this Commonwealth; or

5. Contains viable weed seeds in amounts exceeding the limits as specified in the regulations of the Board. Nothing in this subdivision shall apply to whole unprocessed seeds.

B. The violation of any provision of this section shall be deemed to be adulteration.

(1994, c. 743.)

§ 3.1-828.11. Assessments for variance from guaranteed analysis, misbranding and adulteration.

A. If the Commissioner or his agent determines that a commercial feed fails to meet the label guarantee within the analytical variations specified in § 3.1-828.4, the Commissioner or his agent shall make an assessment against the guarantor on each pound of the lot of commercial feed represented by the sample and which any person sold as follows:

1. For deficient protein, two and one-half times the value of the deficiency;
2. For deficient fat, two times the value of the deficiency; and
3. For excessive fiber, ten percent of the sales invoice price of the feed.

B. If the Commissioner or his agent determines that any commercial feed is misbranded as provided in § 3.1-828.9 or adulterated as provided in § 3.1-828.10 of this chapter, the Commissioner or his agent shall assess ten percent of the sales invoice price of the feed against the guarantor on each pound of the lot of commercial feed represented by the sample and which any person sold.

C. If the Commissioner or his agent finds a commercial feed in violation of § 3.1-828.9 or § 3.1-828.10 or subsection A of this section, the Commissioner or his agent:

1. Shall make an assessment on the manufacturer or guarantor based on the violations which occur in a ninety-day period, such period to begin on the date when the Commissioner or his agent sends notification of the violation to the manufacturer or guarantor. The ninety-day period restarts upon each notification of violation to the manufacturer;
2. Shall make an assessment on the manufacturer or guarantor on violative commercial feeds that bear the same label and are from the same manufacturing location;
3. Shall not make more than one assessment against the manufacturer or guarantor for the same manufacturing lot of commercial feed when the lot identification information is listed on the label of the commercial feed;
4. Shall not make any assessment against the manufacturer or guarantor in excess of \$5,000 per occurrence;
5. Shall make a minimum assessment of \$200 for the first violation;
6. Shall make a minimum assessment of \$400 for the second violation;
7. Shall make a minimum assessment of \$800 for the third violation;
8. Shall make a minimum assessment of \$1,600 for the fourth violation;
9. Shall make a minimum assessment of \$3,200 for the fifth violation;
10. Shall make a minimum assessment of \$5,000 for the sixth violation, and for each ensuing violation, without limitation;

11. Shall waive the initial \$200 minimum assessment if the Commissioner or his agent does not find the violative commercial feed in variance again within the ninety-day period; and

12. May not make an assessment if the value of the deficiency of the initial violation is five dollars or less, but shall notify the manufacturer or guarantor and shall apply all further assessments on additional violations.

D. The manufacturer or guarantor shall pay all assessments to the Commissioner within sixty days of notice of payment due. Any person who fails to pay the assessment within the specified time shall pay to the Commissioner a late fee as specified in subsection A of § 3.1-828.13. The Commissioner shall revoke the license of such person who fails to pay the assessment.

E. The Commissioner or his agent shall compute the approximate value per pound of protein and fat and this computation shall be used to establish the relative value of deficiencies on commercial feed sold or offered for sale in the Commonwealth. The Commissioner may furnish, and upon application shall furnish, such relative values to any person engaged in the manufacture or sale of feed in the Commonwealth.

F. As used in this section, the term "value of the deficiency" means the monetary value of the deficiency in protein or fat of the lot of commercial feed from which the Commissioner or his agent collected a sample. The Commissioner or his agent shall determine the value of the deficiency by calculating the number of pounds of commercial feed deficient in protein or fat, as compared to the label guarantee, in the sample lot and multiplying those pounds by the relative value per pound of protein or fat.

(1994, c. 743.)

§ 3.1-828.12. Prohibited acts.

A. A manufacturer or guarantor of commercial feed shall not:

1. Manufacture or distribute any commercial feed that is adulterated or misbranded;
2. Adulterate or misbrand any commercial feed;
3. Remove or dispose of a commercial feed in violation of an order issued pursuant to § 3.1-828.14;
4. Fail or refuse to obtain a license in accordance with § 3.1-828.6;
5. Fail or refuse to register medicated feed, small package commercial feed, or specialty pet food in accordance with § 3.1-828.7;
6. Obstruct or hinder the Commissioner or his agent in the performance of his duties under this chapter or otherwise attempt to prevent the Commissioner or his agent from performing these duties; or
7. Use metal of any kind, including, but not limited to, any hook, snap, staple or other fastener or device, to secure a package or attach any card, label or ticket to a package containing feed.

B. A person shall not distribute agricultural commodities within the Commonwealth, including, but not limited to whole seeds, hay, straw, stover, silage, cobs, husks, and hulls, which, if such commodity was commercial feed, are adulterated within the meaning of § 3.1-828.10.

(1994, c. 743.)

§ 3.1-828.13. Fee for late payment of assessments; penalties; warnings; injunctions; trade secrets.

A. Any manufacturer or guarantor who does not pay an assessment for variance from label guarantee within sixty days shall pay to the Commissioner a late payment fee of ten percent of the assessment or fifty dollars, whichever is greater, in addition to the assessment for variance from label guarantee.

B. Any person convicted of violating any of the provisions of this chapter shall be guilty of a Class 3 misdemeanor.

C. Nothing in this chapter shall be construed as requiring the Commissioner or his agent to: (i) report for prosecution; (ii) institute seizure proceedings; or (iii) issue a withdrawal from distribution order if a violation of this chapter is minor, or if the Commissioner or his agent believes the public interest will best be served by a suitable notice of warning in writing.

D. The Commissioner is hereby authorized to apply for, and a court of competent jurisdiction to grant, a temporary or permanent injunction, restraining any person from violating, or continuing to violate, any of the provisions of this chapter, or regulation promulgated under the chapter, notwithstanding the existence of other remedies at law.

E. The Commissioner shall hold confidential trade secrets and commercial or financial information supplied by persons subject to this chapter.

(1994, c. 743.)

§ 3.1-828.14. Detained commercial feeds.

A. The Commissioner or his agent may issue and enforce a written or printed stop sale, use, removal or seizure order to the owner or custodian of any lot of commercial feed distributed in violation of this chapter. The Commissioner or his agent shall release for distribution the commercial feed held under a stop sale, use, removal or seizure order when the requirements of this chapter have been satisfied. If the Commissioner or his agent determines that the commercial feed cannot be brought into compliance with this chapter, the Commissioner or his agent shall release the commercial feed (i) to be remanufactured, if possible; (ii) to be returned to the manufacturer; or (iii) to be destroyed.

B. In addition to the provisions of subsection A, the Commissioner or his agent may seize any lot of commercial feed not in compliance with this chapter. The Commissioner or his agent may make application for seizure to a court of competent jurisdiction in the city or county in which said commercial feed is located. In the event that the court finds the said commercial feed to be in violation of this chapter, and orders the condemnation of said commercial feed, the owner of the commercial feed shall dispose of the seized commercial feed in any manner which, in the opinion of the Commissioner, is consistent with the quality of the commercial feed, and which complies with the laws of the Commonwealth. In no instance shall the court order the disposition of said commercial feed without first giving the claimant an opportunity to apply to the court for release of said commercial feed, or for permission to process or relabel said commercial feed, to bring it into compliance with this chapter.

(1994, c. 743.)

§ 3.1-828.15. Cooperation with other entities.

The Commissioner may cooperate with, and enter into agreements with, governmental agencies of the Commonwealth, and with other states, and with agencies of the federal government, and with private associations in order to carry out the purpose and provisions of this chapter.

(1994, c. 743.)

§ 3.1-828.16. Publications.

The Commissioner may publish, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider appropriate.

(1994, c. 743.)

§ 3.1-828.17. Disposition of fees, assessments and penalties.

All licensing, registration and inspection fees, assessments and penalties under this chapter received by the Commissioner shall be paid into a dedicated special fund in the state treasury, which fund is hereby created. The fund shall be used in carrying out the purpose and provisions of this chapter, to include inspection, sampling and other expenses; except that seven cents per ton of commercial feed per license year of inspection fees received by the Commissioner shall be transferred to the Virginia Agricultural Foundation Fund pursuant to § 3.1-22.5. Money in the special dedicated fund created in this section shall not revert to the general fund.

(1994, c. 743.)